IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE PIUS C.KURIAKOSE

WEDNESDAY, THE 20TH JUNE 2007 / 30TH JYAISHTA 1929

WP(C).No. 33604 of 2005(A)

OS.1070/2005 of I ADDL.M.C.,ERNAKULAM

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PETITIONER:

SANNIDHANAM CHITTIES PVT. LTD.,
AYYAPPANKAVU, ERNAKULAM, REPRESENTED BY
ITS MANAGING DIRECTOR, I.G.ASOKAN, ILLATH HOUSE,
S.R.M. ROAD, ERNAKULAM.

BY ADV. DR.K.P.SATHEESAN
SRI.K.K.GOPINATHAN NAIR
SRI.M.R.JAYAPRASAD

RESPONDENTS:

1. REMADEVI MOHANDAS,
W/O.MOHANDAS, C.C.63/1164, VATTATHARA,
S.S.ASRAMAM ROAD, AYYAPPANKAVU, KOCHI-18.

2. K.P.RATHEESH, S/O.PRABHAKARAN,
KOLLEZHATHU HOUSE, KANNACHANTHODU ROAD,
AYYAPPANKAVU, KOCHI-682 018.

3. MOHANDAS, S/O.PADMANABHAN,
C.C.63/1164, VATTATHARA, S.S.ASRAMAM ROAD,
AYYAPPANKAVU, KOCHI-18.

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 20/06/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

APPENDIX(WPC 33604/05)

PETITIONER'S EXTS.:

EXT.P1: TRUE COPY OF THE VARIYOLA SIGNED BY THE 1ST RESPONDENT DATED 9.6.2001.

EXT.P2: TRUE COPY OF THE AGREEMENT BETWEEN THE PETITIONER AND RESPONDENTS DATED 8.5.2003.

EXT.P3: TRUE COPY OF THE EX PARTE AFFIDAVIT DATED 5.11.2005 IN O.S.NO.1070/05 OF THE MUNSIFF'S COURT, ERNAKULAM.

EXT.P4: TRUE COPY OF THE ORDER DATED 5.11.2005 IN O.S.NO.1070/05 OF THE MUNSIFF'S COURT, ERNAKULAM.

PIUS C. KURIAKOSE, J.

W.P.(C) NO. 33604 of 2005

Dated this the 20th day of June 2007

JUDGMENT

Whether copy of the chitty variola signed by one subscriber alone in token of his acceptance of the terms and conditions incorporated therein attracts payment of stamp duty under Article 19 of the Schedule to the Kerala Stamp Act is one of the two questions that arise in this case.

2. Under challenge in this writ petition, instituted by the plaintiff, a Chitty Company, is Ext.P4 order passed by the first Additional Munsiff, Ernakulam finding that two documents which were sought to be marked on the plaintiff's side are insufficiently stamped and directing the petitioner to pay deficit stamp duty and penalty. The documents in question have been produced in this writ petition as Exts.P1 and P2. The suit seeks recovery of money due to the petitioner from the defendants on the basis of a kuri transaction in which the first respondent was the subscriber and the petitioner the foreman. Ext.P1 document is captioned as Variola and bears the

signature of the first respondent subscriber. Ext.P1 is on plain paper and appears to be a printed copy. Ext.P2 is the Chitty Security Agreement executed between the first respondent subscriber and respondents 2 and 3 (defendants 2 and 3) the sureties and the petitioner company represented by its Managing Director. The document is captioned as Chitty agreement and is stamped as an agreement under Article 5 (c) of the schedule to the Kerala Stamp Act at Rs.50/-. The learned Munsiff has held under the impugned order that both the documents are insufficiently stamped and has referred to Article 19 of the Stamp Act. Article 19 provides that the proper stamp duty for Chitty or Kuri Variola where the total amount subscribed exceeds Rs.100/- shall be Twenty five Rupees for every Rs.1,000/- or part thereof of the amount subscribed. It is obvious that the learned Munsiff construed Ext.P1 as a Chitty Variola attracting Article 19 while passing the impugned order.

3. The expression 'Variola' has been defined under Section 2 (14) Kerala Chitties Act as the document containing the articles of agreement between the foreman and the subscribers relating to the chitty and includes vaimpu and kurippattika or other similar

instruments. The Central Statute, viz. the Chit Funds Act 1982, does not use the expression variola, but refers to the corresponding document as chitty agreement which is defined in that statute as meaning the document containing the articles of agreement between the foreman and the subscribers relating to the chitties. The definition given to variola in the Kerala Chitties Act is an inclusive definition. Section 6 of the Chitties Act provides that in every chitty there shall be a variola in duplicate signed by each of the subscribers or by a person authorized in writing by the subscriber in that behalf and such signature shall be attested by at least one witness. Section 7 provides that the variola shall contain the full name and residence of every subscriber, number of tickets or the fraction thereof held by each subscriber, the number of instalments and the amount payable for each ticket at every instalment. Section 8 deals with registration and it is provided therein that the variola with its duplicate shall be filed by the foreman with the Registrar along with the order sanctioning the starting of the chitty where such sanction is required under Section 3 and that the Registrar shall register and return the variola with an endorsement that the chitty is registered.

Section 10 of the Act states that after the variola is signed by a subscriber or by a person authorized in writing by the subscriber in this behalf, the foreman shall supply a true copy of the variola certified as such by him to such subscriber or person authorized by the subscriber, who shall acknowledge receipt of the same, and the foreman shall file the acknowledgments with the Registrar within fourteen days of the first drawing of the chitty.

4. The argument advanced before me by Sri.K.K.Gopinathan Nair, the learned counsel for the petitioner is that Ext.P1 is not the variyola and that it is only a copy of the variola incorporating the terms and conditions of agreement between the subscribers and the foreman and that Ext.P1 will not attract any Stamp duty. There is no difficulty to accept the above argument of the learned counsel. Rule 35 of the Kerala Chitties Rules 1975 provides that the variola as envisaged by Sections 7, 8 and 9 shall conform to the standard set forth in Form No. VI and form No. VI provides that the name and full address of each of the subscribers, the number of tickets taken by them, their signatures and also the signature of witness shall be contained in that form. Relevant statutory provisions referred to

herein before will show that it is obligatory that variola contemplated by the statute shall contain the full name and residence of every subscriber, the number of tickets or the fractions held by each of them, the number of instalments and the amount payable for each ticket at every instalment. It is also necessary that the statutory variola shall be signed by each of the subscribers and that it is such variola which is to be filed by the forman with the Registrar appointed by the Government for registration of chitties under the Kerala Chitties Act. Even in chitties not covered by the Kerala Chitties Act, 1975 but are covered by the Chit Funds Act, the chitty agreement or any other document incorporating the articles of the chitty association and the terms and conditions agreed upon by the foreman and subscribers generally shall be signed by the foreman and each of the subscribers.

5. What then is Ext.P1? Obviously the same is copy of the essential part of the variola incorporating the terms and conditions of the agreement signed by one of the subscribers and retained by the foreman himself. The same however is neither a copy of the full text of the variola envisaged by Sections 6 and 7 of the Kerala Chitties Act

nor is it the certified copy envisaged by Section 10 of that Act. The same does not require payment of stamp duty unlike the original of the statutory variola envisaged by the provisions hereinabove referred to. The learned Munsiff in my opinion was not justified in insisting that stamp duty has to be paid on Ext.P1 under Article 19 as though Ext.P1 is the statutory variola.

6. I am at a loss to understand why the learned Munsiff has found that Ext.P2 chitty agreement also requires stamp duty under Article 19 of the schedule to the Kerala Stamp Act. There is no room for doubt that Ext.P2 is to be construed only as an agreement covered by Article 5(c) and that the stamp duty payable is only Rs.50/- which is seen already paid. Having regard to the principles laid down by this court in **Little Flower Kuries and Enterprises Ltd. v. Victory** (1979 KLT 820) and also in **Mathai Mathew v. Thampi** (1989 (1) KLT 138) the learned Munsiff should not have hesitated to permit marking of the said document as an agreement itself.

7. The result is that the Writ Petition succeeds. The impugned order is set aside. The learned Munsiff is directed to allow marking of

the two documents mentioned in the impugned order without insisting on payment of any further stamp duty or penalty and dispose of the suit on the basis of the entire evidence which has come on record including these two documents.

The Writ Petition is allowed as above. No costs.

dpk/srd **PIUS C.KURIAKOSE, JUDGE**